United Nations A/HRC/37/55/Add.1

General Assembly

Distr.: General
19 January 2018

Original: English

Human Rights Council
Thirty-seventh session
26 February–23 March 2018
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur in the field of cultural rights on her mission to Serbia and Kosovo*

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur in the field of cultural rights on her mission to Serbia and Kosovo from 3 to 14 October 2016. During her visit, she addressed key issues related to the right of people to participate in cultural life, including the right to access and enjoy cultural heritage, without discrimination and irrespective of group affiliations.

The report contains recommendations addressed to the Government of Serbia and the Kosovo authorities, as well as to other stakeholders.

* Any reference to Kosovo, whether to the territory, institutions or population, is to be understood in full compliance with Security Council resolution 1244 (1999) and without prejudice to the status of Kosovo.

GE.18-00741(E)

1800741

Please recycle

Report of the Special Rapporteur in the field of cultural on her mission to Serbia and Kosovo**

Contents

		Page
I.	Introduction	3
II.	International human rights framework	4
III.	Serbia: enjoyment of the right to take part in cultural life	4
	A. Domestic legal framework	4
	B. General context	5
	C. Specific issues of concern	6
IV.	Kosovo: enjoyment of the right to take part in cultural life	8
	A. Domestic legal framework	8
	B. General context	9
	C. Specific issues of concern	9
V.	Right to access and enjoy cultural heritage in Serbia and in Kosovo	11
	A. General issues	11
	B. Cultural heritage in Serbia	13
	C. Cultural heritage in Kosovo	14
VI.	Conclusions and recommendations	18
	A. Conclusions	18
	B. Recommendations	18
	1. Recommendations to the Government of Serbia, the Kosovo authorities and other stakeholders	18
	2. Recommendations to the Government of Serbia	19
	3. Recommendations to the Kosovo authorities	20
	4. Recommendations to the international community	20

** Circulated in the language of submission only

I. Introduction

1. The Special Rapporteur in the field of cultural rights visited Serbia and Kosovo[1] from 3 to 14 October 2016. The purpose of the visit was to identify, in a spirit of cooperation and constructive dialogue, good practices in and possible obstacles to the promotion and protection of cultural rights.

2. The Special Rapporteur addressed key issues related to the rights of people to participate in cultural life, including the right to access and enjoy cultural heritage, without discrimination and irrespective of group affiliations. She was eager to visit Serbia and Kosovo to address in a comprehensive way and using a human rights approach cultural heritage issues that are of interest to all, including the fate of the cultural heritage of the Serbian Orthodox Church in Kosovo and accountability for past destruction of cultural heritage. The present report also contains her observations relating to other cultural rights issues in Serbia and in Kosovo.

3. The Special Rapporteur visited various sites of cultural, historical and religious significance, in Serbia and in Kosovo, without any impediment. They included churches and monasteries, mosques, historic centres and old bazars, as well as an art gallery, hammams and many important cultural landscapes, including sites that had been damaged or destroyed in 1999 and 2004. She met people having connections with these sites and addressed their human rights with respect to this heritage. In Serbia, she spent time in Belgrade, Novi Sad, Novi Pazar and Niš. In Kosovo, she was able to visit Mitrovica/Mitrovicë, Peć/Peja, Prizren and Pristina.

4. The Special Rapporteur met government officials, at the national and municipal levels, including those in the areas of foreign affairs, culture, cultural heritage, gender equality, human rights and education. In Serbia, she met with the Minister of Culture and Media as well as the Minister of Foreign Affairs; the State Secretary at the Ministry of Education, Science and Technological Development; representatives of the Office of Human and Minority Rights, the Office of Kosovo and Metohija and the National Institute for the Protection of Cultural Monuments; several ombudspersons and representatives of national councils for minorities. In Kosovo, she met with representatives of the Kosovo authorities, including the Minister of Foreign Affairs and the First Deputy Prime Minister, as well as governmental experts in the field of cultural heritage and the protection of monuments, the environment and spatial planning, and gender equality. She regrets that despite several requests, she was unable to meet the Minister of Culture. She discussed issues with members of the Parliamentary Committee on Youth, Sports and Culture and with municipal authorities, representatives of the Kosovo police and of the Kosovo Force (KFOR).

5. During the visit, she met with artists, academics, educators, diverse members of civil society, including Serbs, Albanians, Roma, Ashkali and Egyptian people; Serbian Orthodox, Muslim and Jewish leaders; human rights defenders, including women human rights defenders; peace activists; and cultural heritage experts and defenders. The Special Rapporteur sought to discuss issues with stakeholders from many diverse backgrounds so as to hear their narratives and understand their perspectives.

6. The Special Rapporteur extends her thanks to the United Nations Office in Belgrade and the United Nations Interim Administration Mission in Kosovo (UNMIK) for their assistance. She also expresses gratitude to the authorities in Belgrade and Pristina for the level of access to relevant officials and agencies she was granted, and for full access to places and sites.

[1] Any reference to Kosovo, whether to the territory, institutions or population, is to be understood in full compliance with Security Council resolution 1244 (1999) and without prejudice to the status of Kosovo.

7. Serbia and Kosovo have experienced recent events, including the break-up of the former Yugoslavia, repression, mass atrocities, armed conflict in 1998/99 and rioting in 2004, that have had far-reaching consequences on the construction of identities and sense of belonging of their populations and about which there are divergent narratives. The current situation reflects the sensitivity of people in Serbia and Kosovo to the history of these events, which cannot be comprehensively reviewed in the limited space here. The Special Rapporteur notes that discussions about cultural heritage revealed deep wounds that must be addressed to achieve lasting reconciliation and peace.

II. International human rights framework

8. Many provisions of international law are relevant for the protection and promotion of cultural rights. These include article 26 of the Universal Declaration of Human Rights and article 13 of the International Covenant on Economic, Social and Cultural Rights, which specifically highlight the right of each person to education, as well as article 27 of the Universal Declaration and article 15 of the Covenant, which recognize the right of each person to take part in cultural life and to the freedom indispensable for creative activity. In addition, in accordance with article 5 of the United Nations Educational, Scientific and Cultural Organization (UNESCO) Universal Declaration on Cultural Diversity, all persons have the right to participate in the cultural life of their choice and to conduct cultural practices, subject to respect for human rights and fundamental freedoms.

9. The International Covenant on Civil and Political Rights also protects rights bearing an important cultural dimension, in particular the rights to freedom of thought, conscience and religion (art. 18), freedom of opinion and expression (art. 19), and freedom of persons belonging to ethnic, religious or linguistic minorities to enjoy their own culture, profess and practise their own religion, or use their own language (art. 27).

10. The Special Rapporteur stresses the importance of the right to access and enjoy cultural heritage as a human right, which finds its legal basis, inter alia, in the right to participate in cultural life.[2] This right includes the right of individuals and groups to, inter alia, know, understand, enter, visit, make use of, maintain, exchange and develop cultural heritage, as well as to benefit from the cultural heritage of others. It also includes the right to participate in the identification, interpretation and development of cultural heritage, as well as in the design and implementation of preservation/safeguard policies and programmes.

11. In its resolution 33/20 the Human Rights Council stated that "the violation or abuse of the right of everyone to take part in cultural life, including the ability to access and enjoy cultural heritage, may threaten stability, social cohesion and cultural identity, and constitutes an aggravating factor in conflict and a major obstacle to dialogue, peace and reconciliation". The 2003 UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage states that "cultural heritage is an important component of cultural identity and of social cohesion, so that its intentional destruction may have adverse consequences on human dignity and human rights".

III. Serbia: enjoyment of the right to take part in cultural life

A. Domestic legal framework

12. In Serbia, which is a party to both the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, the 2006 Constitution guarantees many human rights enshrined in these instruments. All of these

[2] See A/HRC/17/38, A/HRC/31/59 and Corr.1 and A/71/317. See also Committee on Economic, Social and Cultural Rights, general comment No. 21 (2009) on the right of everyone to take part in cultural life, para. 50.

rights are to be implemented directly. Moreover, under article 22, "citizens shall have the right to address international institutions in order to protect their freedoms and rights guaranteed by the Constitution".

13. The provisions most relevant to concerns raised in the present report include the prohibition of discrimination, including on the basis of culture (art. 21), the guarantee of freedom of thought, conscience and religion (art. 43), the principle that "Churches and religious communities are equal and separated from the State" (art. 44), freedom of thought and expression (art. 46), the requirement of promoting respect for diversity, including through culture (art. 48), freedom of the media (art. 50), freedom of assembly (art. 54), the right to education (art. 71) and the guarantee of freedom of scientific and artistic creativity (art. 73). However, the Constitution does not contain a specific guarantee of the right to take part in cultural life akin to the terms of article 15 of the International Covenant on Economic, Social and Cultural Rights.

14. Article 14 of the Constitution affirms that the protection of national minorities is one of the constitutional principles of the Serbian State. The 2002 law on Protection of Rights and Freedoms of National Minorities prohibits discrimination against such groups. In addition, in accordance with the 2009 Law on National Councils of National Minorities, the Councils are elected bodies, and represent national minorities in the fields of education, culture and official use of language.[3] They also participate in decision-making in these areas.

15. Article 81 of the 2006 Constitution requires that "[i]n the field of education, culture and information, Serbia shall give impetus to the spirit of tolerance and intercultural dialogue and undertake efficient measures for enhancement of mutual respect, understanding and cooperation among all people living on its territory, regardless of their ethnic, cultural, linguistic or religious identity".

16. In 2009, Serbia adopted its Law on Culture, which was amended in 2016. The new law is based on 10 principles of cultural development, which include: "freedom of expression in cultural and artistic creation"; "access to and availability of cultural content"; "respect for cultural and democratic values of the local, regional, national, European and global cultural diversity and intercultural dialogue"; "democratic cultural policy"; and "preservation of cultural and historical heritage".[4]

17. A number of laws, including the law on the prohibition of discrimination (2009) and the law on gender equality (2009), prohibit discrimination.

18. On paper, this is a robust and impressive legal regime. However, the Special Rapporteur often heard, including from some within Government, of the ongoing need for the implementation of this legal framework in practice. She was pleased to learn of the existence of national councils on culture, Roma inclusion, anti-discrimination and on the monitoring of United Nations recommendations. She appreciated expressions of commitment by those in the Office for Human and Minority Rights to full implementation of international human rights recommendations and their request for more support from the United Nations in this regard.

B. General context

19. Serbia is a diverse society. Ethnic minorities include Albanians, Ashkali, Bosniaks, Bulgarians, Bunjevac, Croats, Czechs, Egyptians, Germans, Greeks, Hungarians, Jews, Macedonians, Montenegrins, Roma, Romanians, Ruthenians, Slovaks, Slovenes, Ukranians, Vlachs and others.

20. There are also Serbs and others who fled from other parts of the former Yugoslavia during the conflicts of the 1990s. Some 203,000 internally displaced persons originally from Kosovo were present in Serbia at the time of the mission, 90,000 of whom had

[3] Article 2 of the Law on National Councils of National Minorities.

[4] See www.culturalpolicies.net/web/serbia.php?aid=52.

displacement-related needs. More than 14,000 displaced Roma are said to face a particularly vulnerable situation.

21. Serbia's population is predominately Orthodox Christian with minority Roman Catholic, Muslim, atheist or non-religious, Protestant and Jewish populations. There is no State religion in Serbia and its law recognizes seven "traditional religious communities". Other minority religious groups reportedly face difficulties in obtaining recognition.

C. Specific issues of concern

22. In Serbia, progress has been made with regard to cultural rights since the 1990s. However, there remain serious challenges to cultural rights in many areas which must be urgently addressed.

1. Cultural governance and funding

23. The Special Rapporteur was pleased to note the existence of important institutions devoted to the protection and promotion of culture and cultural heritage in Serbia, including the Ministry of Culture and Media, the National Council of Culture and the Center for the Intangible Cultural Heritage, which are made up of many highly qualified and dedicated staff and experts. However, she was repeatedly told that these institutions receive insufficient funding, which limits their work. The 0.69 per cent of the budget devoted to culture in 2016 is significantly below the 1.0 per cent target set by UNESCO and must be increased, within resource constraints.

24. The Special Rapporteur was pleased to be told at the Ministry of Culture and Media that its efforts aimed at ensuring the non-repetition of the events of the 1990s, a commitment which needs full implementation.

25. The Special Rapporteur received assurances from the then Minister of Culture and Media during her mission that a draft strategy on culture, which would refer to human rights — including cultural rights — and express a commitment to the protection of the cultural heritage of all people living in Serbia would soon be submitted for public debate and finalized by the end of 2016. The development of such a strategy provides a unique opportunity for more fully developing the notion of cultural rights in Serbia, for adopting a cultural rights and human rights approach to all cultural policies and for enhancing the protection of cultural heritage. Unfortunately, the draft strategy, prepared since the Special Rapporteur's visit, had not been adopted as of January 2018. The draft was not provided to the Special Rapporteur, and several of her interlocutors were unaware that the consultation reported by authorities had taken place.

2. Inclusion and non-discrimination in the field of cultural rights

26. The law on national councils of national minorities, enacted in 2009, grants national councils on minorities wide-ranging competences in the fields of culture, education and official use of language and alphabet. At the time of the Special Rapporteur's mission, 21 such national councils were in existence.

27. This structure has a number of positive consequences for the cultural rights of members of minorities. For example, many of these councils have institutes for culture which publish books and magazines, and the councils are reportedly tackling issues related to culture and inclusion. However, many interlocutors stressed the need to decrease the resulting segregation of children belonging to some minorities in the education system, and more widely in society, when they are taught exclusively in their mother tongue and when members of the majority are not taught the relevant minority languages.

28. Roma civil society stressed to the Special Rapporteur the need for the creation of Roma cultural institutions to combat anti-Roma sentiment expressed, in particular, in the media and by those they termed "neo-Nazis". They noted the lack of representation of Roma on the administrative board of Radio-TV Serbia and the perceived lack of inclusion of Roma-related material in local archives, all of which need to be addressed.

29. Some, including many of Serb ethnicity, expressed concerns about the human rights impact of the role of the Serbian Orthodox Church when it was seen to impose itself as a "cultural authority". Others criticized the close relationship between Church and State, including reported cases of observance of Serbian Orthodox celebrations at municipalities and in schools, and appearances by the Prime Minister and President with the Patriarch.

30. Despite ongoing discrimination against lesbian, gay, bisexual and transgender persons, local rights activists indicated that the climate for their work had improved. The Special Rapporteur was pleased to learn that after several years of being banned or met with hostile counterdemonstrators, the Belgrade Pride march has been permitted since 2014 and in 2016 did not face counter-protests. She commends the organizers of this event for their efforts to promote human rights. In 2017, Ana Brnabic, Serbia's first female Prime Minister and first openly gay elected official, was present during the parade.

31. Cultural rights must also be protected in rural areas, including through adequately resourced village libraries which incorporate youth-oriented materials.

3. Freedom of artistic expression

32. The right to the freedom indispensable for artistic expression and creativity is protected under article 15 of the International Covenant on Economic, Social and Cultural Rights and article 19 of the International Covenant on Civil and Political Rights. Artistic creativity is necessary for the development of vibrant cultures and the functioning of democratic societies.[5]

33. The Special Rapporteur was concerned about reports of ongoing pressure, including financial pressure, on the exercise of freedom of artistic expression and creativity in Serbia, targeting in particular independent publishers and artists expressing resistance to nationalistic ideologies.

34. The independent DAH theatre, which has long been associated with critics of past atrocities and has engaged in street performances about war crimes, told the Special Rapporteur in 2016 that after years of investing in a particular location in Belgrade, they were unable to remain in that space in a city-owned building. They were required to move out in February 2017 after a costly legal battle.

35. Some artists and civil society organizations also reported on at least one case of the director of a cultural institution being fired for hosting alternative cultural programmes. They stressed that patterns of funding are having a negative impact on the independent art scene.

36. The Special Rapporteur notes with appreciation the efforts of some arts companies to engage in inclusion projects aimed at offering cultural content accessible for persons with disabilities, including theatre for the blind.

4. Cultural rights and human rights defenders

37. The Human Rights Council has recognized "the importance of the independent voice of human rights defenders and other civil society actors ... in promoting, protecting and realizing all human rights, including... cultural rights".[6] In Serbia, human rights defenders, including those defending cultural rights, continue to face pressure.

38. The Special Rapporteur was concerned about the impact of an exhibition organized by the ruling party which began in July 2016, entitled "Uncensored Lies", and which took aim at and depicted as liars people who had been critical of the Government or, for example, had asked questions about the genocide in Srebrenica. The exhibit included the names and photographs of human rights defenders and at least one artist. Civil society and independent voices were raised to counter the potentially negative impact of the exhibition.

[5] See A/HRC/23/34.

[6] Resolution 31/32, para. 7.

39. The Special Rapporteur deplores the pattern of attacks against events held by the renowned organization Women in Black when they carry out activities to commemorate atrocities committed during the 1990s and the Second World War, including through "engaged art" and video activism.[7] These efforts are critical for the creation of a dialogue about the past, which is key to improving the climate for the enjoyment of cultural rights for all and for the protection of cultural heritage today.[8] Notwithstanding significant articulated commitments to the "culture of remembrance", the authorities have not undertaken sufficient measures to combat these attacks, and must do so.

40. The Special Rapporteur was also concerned about an incident in 2016 in which stones were thrown through the windows of the Human Rights House in Belgrade. To date, there has been no investigation into this particular incident.

41. The Special Rapporteur is likewise concerned about repeated media campaigns declaring human rights defenders to be traitors and "foreign mercenaries", and promoting their exclusion from Serb and Orthodox identities. One human rights defender described the situation as a "climate of fear and self-censorship" in which it was at times more difficult to do their work than during the 1990s.

5. Resurgence of ultranationalism

42. The Special Rapporteur takes note with grave concern of the resurgence of ultranationalism and other forms of far-right extremism in Serbia and its harmful impact on the enjoyment of cultural rights, which must be urgently addressed.[9] For example, the planned screening in Niš on 22 June 2017 of a documentary film, *Albanian Women Are Our Sisters*, about resistance to the war in Kosovo and solidarity between citizens of Serbia and Kosovo during the 1999 conflict, was cancelled by the organizers for safety reasons because of a protest by far-right organizations in front of the cinema during which protestors threatened and insulted those seeking to attend and reportedly threw stones at them, in the presence of police. A subsequent screening in Kraljevo was also cancelled.

43. The Special Rapporteur was disappointed that in the prosecution of Radomir Počuča, a spokesperson for the Special Police Unit of the Serbian Military Intelligence Agency, for his vitriolic Facebook posts about Women in Black, including graphic calls for violence against them, the defendant's claimed patriotic motive was given as a mitigating explanation for his conduct and when he was acquitted in December 2016. This result, and its claimed justification, sends precisely the wrong message.

IV. Kosovo: enjoyment of the right to take part in cultural life

A. Domestic legal framework

44. In accordance with section 1.3 of UNMIK regulation No. 1999/24 on the law applicable in Kosovo, persons undertaking public duties or holding public office are required to observe the provisions of the International Covenant on Economic, Social and Cultural Rights.

45. In its 2008 Declaration of Independence, the Assembly of Kosovo stressed the following: "We hereby undertake the international obligations of Kosovo, including those concluded on our behalf by the United Nations Interim Administration Mission in Kosovo (UNMIK) and treaty and other obligations of the former Socialist Federal Republic of Yugoslavia to which we are bound as a former constituent part."

---

[7] See "Repression against human rights defenders: attacks on Women in Black", dossier No. 8, September 2016–January 2017, and dossier No. 9, February–July 2017.

[8] See A/HRC/25/49.

[9] See Ivana Sekularac, "Ultra-nationalist resurgence could complicate Serbia's EU path", Reuters, 17 April 2016.

46. According to article 19 of the 2008 Constitution, international agreements, once ratified, become part of the internal legal system and have superiority over the laws of Kosovo. Article 22 stipulates that human rights and fundamental freedoms guaranteed by a number of international agreements are constitutionally guaranteed and directly applicable in Kosovo and, in the case of conflict, have priority over laws and other acts of public institutions. However, this constitutional list does not include the International Covenant on Economic, Social and Cultural Rights, despite the fact that it was ratified by Yugoslavia on 2 June 1971.

47. While the Covenant is still part of the applicable law in Kosovo pursuant to UNMIK regulation No. 1999/24,[10] the Special Rapporteur encourages the Kosovo authorities to clarify the matter and recommends a clear commitment to implement the rights and obligations contained in the International Covenant on Economic, Social and Cultural Rights.

48. Considerable progress has been made in Kosovo with regard to building the rule of law and institutions, and a number of laws and mechanisms for the protection of human rights are in place. Nonetheless, implementation shortcomings are common. In 2015, a package of basic laws on human rights was adopted. It includes the law on the ombudsperson and the laws on gender equality and on protection from discrimination. Kosovo also has a comprehensive legal framework for the protection of national minorities.

49. There is a complex legal and institutional framework for the protection of cultural heritage in Kosovo, including the 2008 Cultural Heritage Law, which is modelled on the provisions of the Ahtisaari Plan and for which the Special Rapporteur heard praise. The Kosovo Council for Cultural Heritage, an advisory body to the Assembly of Kosovo, is mandated to oversee and coordinate implementation of the legal system and support the protection, conservation and management of cultural heritage.

50. The overall lack of implementation of this framework remains a concern, as does the poor coordination among these institutions and the fact that some appear to be non-existent or inactive. Concerns were raised with the Special Rapporteur that national policy or even court decisions were not being fully implemented at the municipal level. The key is political will, which must be clearly expressed and actively employed.

B. General context

51. Kosovo is a culturally diverse society still recovering from the effects of conflict, with a committed civil society and growing cultural institutions. The majority of the people in Kosovo today are Albanians, with a minority population which includes Serbs, Bosniaks, Gorani, Roma, Ashkali and Egyptians, and Turks. Islam is the majority religion with Serbian Orthodox, Roman Catholic and non-religious minorities, as well as some Muslim minority groups, including Shia. Much has been achieved in the field of cultural rights, but there are also many outstanding problems.

C. Specific issues of concern

1. Funding

52. The Special Rapporteur heard repeated concerns that culture is not prioritized in the budget. There are many excellent ideas and initiatives in Kosovo civil society that could be carried out, but the lack of funds remains the main obstacle for many of them. This means that more adequate allocations by national and municipal authorities are necessary, as well as greater international funding for culture in Kosovo.

[10] See A/HRC/31/54/Add.2.

2. Protecting cultural spaces

53. The Special Rapporteur heard particular concerns about the impact of privatizations — and the way in which they had been conducted — on public spaces and cultural sites, which are critical to the enjoyment of cultural rights. In Mitrovica/Mitrovicë, the Special Rapporteur was informed that there were no cinemas, except for one space in the cultural centre, which is only sporadically used as a movie theatre. However, she was very pleased to hear that civil society campaigning in Prizren under the rubric "Lumbardhi public again" had been successful in saving the Lumbardhi cinema, and she commends the relevant authorities for responding to this demand.

54. The Special Rapporteur received reports about the lack of adequate consultations with the concerned population about cultural projects. This was reported to be the case regarding the refurbishment of the Mitrovica/Mitrovicë bridge, which is in an area that is especially important for joint cultural programming. However, others insisted that such consultations had been conducted, but that people did not take part. The response to this was that there was a lack of public confidence that input would be heeded. Authorities need to continue to engage in consultations, and in an inclusive and meaningful way.

3. Equality and inclusion

55. Displaced Serbs originally from Kosovo and wishing to return there recounted the difficulties they experienced due to the lack of adequate educational opportunities in the Serbian language. This sometimes results in youth having to use military transport to travel to school and to do so over long distances. Consequently, families have had to move to allow for the schooling of their children. The equal enjoyment of cultural rights is also a critical component of enabling sustainable return.

56. The Special Rapporteur notes with satisfaction the adoption of the law on gender equality, and the quotas for women's participation in public institutions. To date, however, no significant steps have been taken to reach this goal, and the Special Rapporteur regrets that the authorities have declared that these standards are only "guidance", rather than binding provisions. Women's equal cultural rights, including their right to access and enjoy cultural heritage, must be fully implemented. Indeed, the Special Rapporteur was pleased by the large number of highly qualified women cultural heritage experts with whom she was able to meet, including from the Ministry of Culture, Sports and Youth, as well as from the Prizren Council on Cultural Heritage, among museum professionals and in the civil society sector.

57. Likewise, the Special Rapporteur welcomes the strategy on the rights of persons with disabilities. However, she hopes that in addition to its full implementation, greater attention will be given to their access to cultural life and heritage. The Mitrovica/Mitrovicë cultural centre, which she visited, does not have an elevator, so that the very meeting room used for her civil society consultations would not have been accessible to participants in wheelchairs. The main meeting room at UNMIK itself is not accessible by elevator.

4. Fundamentalism

58. Diverse stakeholders, including religious leaders, officials and women human rights defenders, shared their preoccupations about the impact of radicalization and religious fundamentalism.[11] This was reportedly due in part to funding coming from Gulf countries.[12] Women human rights defenders noted pressure on women in some cases to change their mode of dressing and adopt veiling, and that some individuals now refused to shake the hand of a person from another religion.[13] Members of the Muslim clergy who spoke out against extremists sometimes received threats or were attacked. Many said that a preventive approach and education were key to tackling this problem and protecting the traditionally more tolerant approach to religion. This is not only a security issue but a question of human

[11] On the cultural rights impact of fundamentalism and extremism, see A/HRC/34/56.

[12] Carlotta Gall, "How Kosovo was turned into fertile ground for ISIS", *New York Times*, 21 May 2016.

[13] On the impact of fundamentalisms on the cultural rights of women, see A/72/155.

rights, including cultural rights, and should be addressed as such, in accordance with international standards and as a matter of urgency.

V. Right to access and enjoy cultural heritage in Serbia and in Kosovo

A. General issues

59. During the mission, the Special Rapporteur paid particular attention to the right to access and enjoy cultural heritage. A human rights approach to cultural heritage focuses on relationships between people and heritage, as well as on prevention of its destruction, education about the importance of the heritage of all and support for cultural heritage defenders.

60. Cultural heritage is to be understood as encompassing the resources enabling the cultural identification and development processes of individuals and groups, which they, implicitly or explicitly, wish to transmit to future generations.[14] It must be understood in a holistic way, including the perspectives, contributions and practices of all persons and groups. In Serbia and Kosovo, as important as they are, cultural heritage is not composed only of monasteries and mosques; it also includes artistic, historic and other cultural sites and practices in all their diversity. There should be no monolithic view of what constitutes or can constitute cultural heritage, and cultural heritage should never be used to construct discourses or policies aimed at the exclusion of others. Cultural heritage is, as one local expert underscored, "multilayered".

61. All persons, whether members of ethnic or religious minorities, secular people, women, lesbian, gay, bisexual and transgender people, persons with disabilities or people of mixed identities, have the right to make significant contributions to how cultural heritage is understood, developed and integrated in cultural practices.

62. With regard to the tensions surrounding cultural heritage arising between Serbia and Kosovo in general, the Special Rapporteur wishes to make the following points. Perhaps unsurprisingly, narratives and perspectives about heritage were quite dissimilar depending on where they were expressed and by whom. The Special Rapporteur is concerned about the human rights impact of the perception gap regarding the meaning and importance of different aspects of cultural heritage.

63. She deeply regrets discourses disputing the importance of the cultural heritage of the Serbian Orthodox Church in Kosovo, or intentionally omitting mention of the specific relationship of the Serbian Orthodox Church with certain sites. Conversely, she greatly regretted encountering discourses minimizing the importance or even the existence of the cultural heritage of Kosovo Albanians. Both discourses are damaging to human rights and offensive, and must evolve in accordance with cultural rights standards.

64. Fortunately, some people in civil society from diverse backgrounds are eager to combat such perspectives. The Special Rapporteur appreciated those who echo such universalist views as "culture can never be divided". This mirrors the historical practice of sometimes shared protection and repair of heritage sites in the region, which reflected coexistence. One positive current example was the organization of joint events by a civil society group in Mitrovica/Mitrovicë, with people of mixed backgrounds to visit each other's sites of cultural significance. Such activities were curtailed due to lack of funding and need all possible support, from Serbia, from Kosovo, and from the international community.

65. While particular aspects of heritage have special resonance for and connections to specific groups, it is critical to enhance the notion of heritage as a shared common good important for all. The Special Rapporteur was glad to hear some official rhetoric in this

[14] See A/HRC/17/38, paras. 4–5, and A/71/317, para. 6.

regard. The challenge before people in Serbia and Kosovo is for everyone to equally embrace the heritage of "the other".

66. The Special Rapporteur is encouraged by the fact that she met people from all backgrounds who care deeply for cultural heritage, including that of others. They must overcome obstacles posed by the current situation to realize such views. For example, a Serb academic indicated that he would like to be able to take his students to visit monuments in Kosovo but was not sure that it would be possible given the political climate. Some Kosovo Albanians indicated that they felt unwelcome at Serbian Orthodox sites. Exchanges and visits must be organized and encouraged.

67. Some stressed to the Special Rapporteur the importance of adopting a regional approach to cultural heritage which would be inclusive, could transcend political limitations and promote interactions around heritage.

Legacy and impact of "destructions"[15]

68. The UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage defines "intentional destruction" as "an act intended to destroy in whole or in part cultural heritage, thus compromising its integrity, in a manner which constitutes a violation of international law or an unjustifiable offence to the principles of humanity and dictates of public conscience". The label of intentional destruction may also apply in cases of wilful neglect.

69. The mandate of the Special Rapporteur on cultural rights is not designed to protect culture and cultural heritage per se, but the conditions allowing all people without discrimination to access, participate in and contribute to cultural life in a continuously developing manner. These conditions are greatly jeopardized when cultural heritage is at risk or destroyed. Therefore, prima facie, destruction of cultural heritage must be considered as a violation of cultural rights.[16]

70. The histories of widespread destruction of cultural heritage in Serbia and Kosovo during and after the conflict of 1998/99 are appalling. Many accounts and statistics are available on the harm done to cultural heritage associated with either Serb or Kosovo Albanian sites.[17] Religious sites and cemeteries, as well as entire villages, have reportedly been destroyed. However, the Special Rapporteur did not receive any encompassing local accounts of the overall destruction in Serbia and Kosovo acknowledging the harm done to sites associated with all parts of the population. A holistic approach is crucial.

71. There is also a need for mutual acknowledgment of the harm that has been done in the past by attacking heritage related to various groups and the suffering this has caused. Serbs and Kosovo Albanians must recognize that they have been both victims of the destruction of cultural heritage and its perpetrators, and transcend simplistic victim narratives which overlook the violations of the cultural rights and the suffering of others.

---

[15] As in her previous report, the Special Rapporteur has used the term "destructions" in certain circumstances to underscore the multiplicity and diverse nature of the phenomenon.

[16] See A/71/317, para. 13.

[17] From a Serb perspective, see Branko V. Jokić and others, *The March Pogrom 2004-2014: Ten Years Later*, Office for Kosovo and Metohija, Government of the Republic of Serbia, 2014 (detailing destruction or damage to 35 heritage-listed Orthodox churches, burning of 800 Serb homes, killings of several dozen people and expulsions of thousands "as an orchestrated process of cultural engineering for which there has been impunity"). See also Ljubiša Folić, *Crucified Kosovo: Desecrated and Destroyed Orthodox Serbian Churches and Monasteries in Kosovo and Metohija (June 1999-May 2001)*, 3rd ed., Serbian Orthodox Church, Diocese of Raška and Prizren, 2001 (alleging a "systematic strategy" of "annihilation of all traces" of Serb and Christian culture in Kosovo and Metohija along with the mass exodus of Serbs from the territory and detailing attacks against Serbian Orthodox religious sites, and listing several cases of murder of Orthodox clergy). From a Kosovo Albanian perspective, see Ditunia Islame, *Serbian Barbarities Against Islamic Monuments in Kosova (February '98-June '99)*, 2000 (detailing "planned" destruction of Islamic monuments, including mosques and Islamic community councils, and killing of imams, alleged to be part of a "Serbian genocide" and "culturocide").

Lasting peace and reconciliation require no less. The Special Rapporteur refers to the many reports of widespread attacks against and destructions of mosques, historic centres, *kullas* (traditional houses) and cultural sites such as archives committed by Serbian security forces and paramilitaries in 1998/99 in Kosovo, as well as against churches committed by the Kosovo Liberation Army and others in the summer of 1999. She also refers to the intentional destruction of, or damage to, in particular, at least 35 listed Orthodox monuments and churches between 17 and 19 March 2004,[18] followed by numerous attacks and incidents against Serbian Orthodox cultural heritage, reportedly including cemeteries and icons, since then; and retaliatory attacks during and after the events of March 2004, including on the workshop of well-known Kosovo Albanian sculptor Agim Čavdarbaša in Pristina, against two mosques in Niš and Belgrade and on two Ottoman-era tombstones in the Citadel Museum in Belgrade, the last reportedly by a curator.

72. The Special Rapporteur heard in the voices of victims of and eyewitnesses to such acts, and those of groups particularly affected, the same shock, pain and loss. She deplores all these destructions of cultural heritage, which constitute violations of the right to access and enjoy cultural heritage. No act of destruction of cultural heritage justifies another. All necessary steps must be taken to prevent any repetition and to hold perpetrators accountable, in accordance with international norms.

73. One purpose of the destruction has been to deprive displaced people of anything to which they could return, as well as to erase the history of their presence and claim a monopoly or monolithic identity in particular locales. While noting the information that many displaced persons from Kosovo do not necessarily wish to return there in the current situation, the Special Rapporteur also heard some express the hope of seeing their heritage restored as a prelude to their being able to at least re-establish relationships with their places of origin or, indeed, to return to their former homes.

74. The Special Rapporteur deplores the high level of politicization of cultural heritage issues. This instrumentalizes cultural heritage, undermines its protection and heightens the risks to it, produces monolithic discourses not appropriate in diverse societies and impedes implementation of a wide range of human and cultural rights for all. Hence, Serbia and Kosovo must depoliticize these issues and de-link cultural heritage matters from nationalistic agendas. Cultural heritage is not a weapon: it is an issue of universal human rights.

75. Destructions have created huge impediments to the exercise of the right to access and enjoy cultural heritage, and jeopardize the rights of future generations. Some of the heritage sites can no longer serve as sources of knowledge and mutual understanding, as places to conduct rituals and cultural practices and as venues for social interaction or friendship-building across groups, irrespective of affiliation.

B. Cultural heritage in Serbia

76. The Special Rapporteur visited Stare Sajmište, a former fairground site which was used as a concentration camp for women and children during the Second World War, and is located in the centre of Belgrade.[19] After the war, Sajmište was populated by Roma, some of them descendants of the camp inmates, and refugees from the wars in the 1990s. The location had its protected status revoked in 1992, which enabled companies to open businesses and obstruct its preservation and commemoration. A number of civil society organizations have campaigned for the site to be protected and used as a memorial to all

[18] Some Serb interlocutors argued that these events were concerted, not spontaneous, something which some Kosovo Albanian interlocutors denied. There have been some trials related to these events in Kosovo courts. These have been criticized by the Organization for Security and Cooperation in Europe (OSCE) for, inter alia, failure to account for the "ethnic motive" and lenient sentences for setting religious monuments on fire. See OSCE, *Four Years Later: Follow Up of March 2004 Riots Cases by the Kosovo Criminal Justice System*, 2008.

[19] For historical background, see Milovan Pisarri, *The Suffering of the Roma in Serbia during the Holocaust*, Forum for Applied History, Belgrade, 2014.

victims: Jews and Roma, imprisoned Partisans and Serbs from the Independent State of Croatia, as well as prisoners of war detained in the camp, many of whom also died. While the municipality of Belgrade established a commission for Sajmište in 2011, the Special Rapporteur is seriously concerned that to date, no decision has been taken to memorialize the site in an adequate manner. She was also alarmed by reports received during the mission that the German Pavilion was under threat of destruction by the municipality for the construction of a road, and that the Topovske šupe camp used for men was planned for destruction in 2017 to build a shopping mall. She shares the fear of the Center for Holocaust Research and Education that any such destructions could also be "precedent-setting",[20] thereby increasing the risk to other sites. Moreover, she also finds particularly offensive that at the site of mass executions of men in Jabuka, Pančevo, the memorial built in 1981 is in bad condition and used by a local hunting association for target practice and wildlife hunting.

77. The Special Rapporteur has learned that there have been no new developments regarding these sites, and no final decisions taken since the time of her mission. She renews her strong recommendation to the Government of Serbia and the municipality of Belgrade to ensure the adequate memorialization of these sites, in close consultation with the concerned groups. Such memorialization is an essential part of what has been called the "battle against forgetting",[21] and critical to ensuring human rights, including cultural rights, without discrimination, in today's Serbia.

78. The Special Rapporteur was pleased to visit the statue honouring the Romani singer Saban Bajramovic in Niš, which has been erected as a result of a civil society initiative. However, she was sorry to learn that this statue was vandalized in the past, including with swastikas and ethnic slurs, though measures have been taken to try to ensure that it is not attacked again. Further steps should be taken to create more monuments commemorating the heritage of the Roma and other marginalized people; to consult the people concerned when doing so; and to make sure that such sites are treated with respect and used to promote tolerance and inclusion, rather than as what one civil society voice called "an alibi".

79. Beyond the borders of Serbia itself, it is critical for Serbia to come to terms with the recent history of its authorities' role — whether through participation, collusion or acquiescence, depending on the context — in the vast destruction of cultural heritage in other parts of the former Yugoslavia during the conflicts of the 1990s, including in Bosnia, Croatia and Kosovo, a pattern of cultural destruction about which experts have determined that, when taken together, there "can be no doubt as to the systematic tactics being employed".[22]

C. Cultural heritage in Kosovo

80. The massive destruction of cultural heritage in Kosovo during the 1998/99 conflict and its aftermath, crimes aimed at "cultural cleansing", still cast a long shadow.[23] According to the research of international experts reporting to the International Tribunal for the Former Yugoslavia, the damage included 225 of 607 religious facilities registered by the local Islamic community that were completely or partially destroyed during the conflict.

---

[20] Center for Holocaust Research and Education, *Report on the State of Holocaust and Poramos Sites in Belgrade, Serbia*, 2016, p. 4.

[21] Pisarri, p. 2.

[22] Robert Bevan, *The Destruction of Memory: Architecture at War*, 2016, p. 60. "Ethnic cleansing was accompanied by a policy of cultural cleansing to render it permanent and irreversible."

[23] As the cultural rights mandate has documented, there are always political agendas on the battlefield of memorialization. This produces conflicting, divergent narratives about such events, including about relevant statistics. See, for example, Folic, *Crucified Kosovo*, and Islame, *Serbian Barbarities Against Islamic Monuments in Kosova*.

and 80 Orthodox churches and monasteries that were attacked in its aftermath (approximately 40 of which were damaged and 40 completely destroyed).[24]

81. She is pleased to note that three trials were conducted by the Tribunal in this regard, including two cases against Serb political and military officials and police in which all but one defendant were found guilty of persecution for wanton destruction of cultural monuments and religious facilities of Kosovo Albanians.[25] In *Prosecutor v. Vlastimir Đorđević*, the destruction in question was determined to be "coordinated and pre-planned".[26] According to the Trial Chamber in that case, "With regard to the crime of the wanton destruction or damage of Kosovo Albanian religious sites … this widespread destruction was committed with persecutory intent as symbols of Kosovo Albanian heritage and identity, and … was part of the common plan. In particular, the fact that the mosques were targeted in coordinated and pre-planned actions of the Serbian forces — often with the use of explosives and detonating equipment — from the first few days of the [North Atlantic Treaty Organization] campaign, persuade the Chamber that their destruction was part of the plan to terrorize the ethnic Albanian population into leaving Kosovo."[27] It is urgent that the relevant judgments be widely taught and publicized in Serbia and Kosovo.

82. Unfortunately, as most of the Serbian Orthodox sites that were damaged were attacked after the signing of the Military-technical agreement between KFOR and the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia (Kumanovo Agreement) that terminated the mandate of the International Tribunal for the Former Yugoslavia for the Kosovo situation, these grave incidents were not dealt with by the Court. Moreover, those responsible for the destructions of only some 20 of the mosques destroyed in 1999 were brought to justice by the Tribunal. Both accountability for all perpetrators and dissemination of comprehensive information about all the destructions from this time period remain critical outstanding tasks. They are necessary both for affording justice for past destructions and for creating a climate in which future destructions are less likely. Such destructions should be memorialized collectively, in close consultation with relevant populations and recognizing both particular connections to sites and their broader importance.

83. The past destructions of cultural heritage are an integral part of other atrocities and crimes committed against people and of the suffering inflicted. Accountability for these violations of international law remains essential. The Special Rapporteur appreciated the letter of the President of Kosovo, sent during her visit, calling for prosecutions in these areas. Full, impartial and inclusive implementation of this important initiative is imperative. Unfortunately, one year later there have been no further developments in this regard.

84. Many of the sites the Special Rapporteur visited in Kosovo had been damaged or destroyed in 1999 or 2004, such as the Bayrakli mosque and the old bazar in Peć/Peja or the Church of Saint Georges in Prizren. But she also visited the historic centre of Prizren, where many cultural heritage buildings have been destroyed, damaged or threatened more recently by urban development projects. Meaningful consultations must be undertaken regarding decisions about urban development that affect cultural heritage. The Special Rapporteur noted the particular challenges and difficulties facing cultural heritage defenders who raise these issues, and is concerned at reports that some of them have been threatened, including by private actors from the field of business.

---

[24] Andrew Herscher and Andras Riedlmayer, *Destruction of Cultural Heritage in Kosovo, 1998-1999: A Post-war Survey*, expert report for the International Tribunal for the Former Yugoslavia, 2001. This study was based on fieldwork carried out between 1999 and 2001.

[25] See *Targeting History and Memory: The ICTY and the Investigation, Reconstruction and Prosecution of the Crimes against Cultural and Religious Heritage*, available at http://heritage sense-agency.com/#kosovo.

[26] International Tribunal for the Former Yugoslavia, Trial Chamber II, *Prosecutor v. Vlastimir Đorđević*, case No. IT-05-87/1-T, judgment of 23 February 2011, para. 2151.

[27] Ibid.

85. Education programmes on the cultural heritage of all, including in the curriculum itself, must be increased. While the Special Rapporteur encountered many excellent and committed professionals, she also learned of the need for capacity-building in related fields, and noted the reported lack of a degree-granting university programme in archaeology in Kosovo.

Cultural heritage sites in Kosovo of special significance to the Serbian Orthodox Church and Serbs

86. The Special Rapporteur visited several sites of particular significance to the Serbian Orthodox Church and Serbs located in Kosovo. These sites included the Sokolica monastery near Mitrovicë/Mitrovica, the Peć/Peja patriarchate, the Dečani monastery and church, as well as the Gračanica monastery and church.

87. These sites, which have traditionally been gathering places, are no longer easily accessible to Serbs. The current overpoliticization of and lack of human rights-based approach to cultural heritage issues, as well as the ongoing and deep mistrust between many Serbs and Kosovo Albanians, including at official levels, exacerbate this situation. The Special Rapporteur was able to observe the importance for Serbs of visiting such sites, to take part in rituals that are closely connected to them and their attached iconostasis, and to socialize and maintain a sense of belonging. In addition, these living monuments cannot be well preserved without the constant presence of the monks or nuns. The monastic tradition is in itself a form of intangible heritage. It is important to hear and understand the perspective of the Serbian Orthodox Church, which wishes to abide by its responsibility to preserve these monuments.

88. After the events of March 2004, these sites have been given special protection, in particular by KFOR. Except in the case of the Dečani monastery, which remains under the military protection of KFOR, other sites have now been transferred to the jurisdiction of the Kosovo police. Reports from a variety of sources acknowledged the dedication and increased capacity of the Kosovo police with regard to the protection of sites, in particular thanks to its specialized unit for the protection of cultural heritage, which is multi-ethnic in its composition. Due to actions taken at various levels, the number of security incidents involving cultural heritage in Kosovo seems to be on the decline, and there is no longer a need for heavy escorts to accompany Serbs wishing to visit Orthodox sites. These considerable achievements must be acknowledged.

89. However, the Special Rapporteur also received allegations that this information does not entirely reflect the reality, and notes the view of the Government of Serbia that safety remains a serious concern. The Special Rapporteur remains concerned about the reported ongoing threats received and graffiti of a serious nature, and vigilance is critical to avoid any repetition of such incidents. Serbian Orthodox monks and nuns reported to the Special Rapporteur that, in some instances, they still are uncertain about security and are longing to feel welcome and accepted. This involves increased actions in the field of education and awareness-raising and measures to build trust. Any incidents or threats involving this heritage must continue to be condemned publicly and widely by officials, and by diverse religious and cultural leaders, to assure the relevant groups of their safety and to indicate the utter unacceptability of such conduct. Such condemnations reportedly were effective in stopping such acts in the past.

90. Relationships with heritage are syncretic. Sites of specific significance for the Serbian Orthodox Church and Serbs in Kosovo are also important for many other people, including Kosovo Albanians, who sometimes have accessed monasteries or churches to pray or visit. From a human rights perspective, protecting and ensuring full respect for a special relationship between the Serbian Orthodox Church and these sites does not mean that others should not have any access or opportunity to also build a relationship with them. Many within the Serbian Orthodox Church as well as members of other religious or non-religious groups are eager to ensure more open and free access to these sites. Of course, varying degrees of access and enjoyment may be recognized, taking into consideration the

diverse interests of individuals and groups according to their relationship with specific cultural heritages,[28] and a good balance has to be reached between the need to offer access and the requirement to ensure security. Security must be guaranteed in the light of past acts of wanton destruction. However, oversecuritization bears other risks, notably of exclusion and alienation. Restrictive measures on access must respect international standards regarding possible limitations to human rights, in particular cultural rights.

91. There is a clear need to build greater trust between the Serbian Orthodox Church and the Kosovo authorities and to have good institutional channels and mechanisms to ensure dialogue. In this regard, the Special Rapporteur regrets that the Implementation and Monitoring Council, as planned under Annex V of the Ahtisaari Plan, after successful beginnings, seems to be deadlocked since 2015. She encourages the Serbian Orthodox Church and the Kosovo authorities to take steps to show their good will in making this mechanism work again and to reactivate and enhance mechanisms for cooperation. She notes the assertion made by the Kosovo authorities that such cooperation is being developed and hopes that this process will continue and accelerate.

92. A solution, based on mutual respect and respect for international standards on human rights and cultural heritage, needs to be achieved for the Church of Christ the Saviour in Pristina. This is a controversial topic in Kosovo, about which there are opposite narratives. On 13 November 2017, the Kosovo Appeals Court granted the Serbian Orthodox Church landownership rights to the Church that had been a source of dispute since the 1990s, rejecting an appeal from the University of Pristina. Pending final resolution, it is important that the dignity of the site be respected and ensured.

93. While expressing recognition of the tremendous efforts of international actors, including KFOR, to protect cultural heritage in Kosovo, the Special Rapporteur notes that a number of Serbs, including officials, expressed particular concern that some destruction of or damage to heritage of special significance to them took place when such international actors were present in Kosovo or were even allegedly in the vicinity of the sites. She believes it would be important to undertake thorough reviews of both best practice and any failures on the part of international actors in this regard so as to improve practice going forward.

94. More must be done to facilitate reconstruction and necessary repairs to cultural heritage sites belonging to the Serbian Orthodox Church, in consultation with those connected to the sites. Decisions in this regard should be taken in accordance with human rights, including cultural rights, and the relevant technical standards, and not for political considerations or so as to constitute reprisals.

95. The Special Rapporteur was pleased to meet in Belgrade with representatives of the more than 200,000 internally displaced persons from Kosovo, who stressed the importance of visiting cultural sites, including churches and cemeteries, on return visits to Kosovo. Reports of cultural heritage destruction, which they saw as an attempt to wipe out their history, came as especially heavy blows to this population. They were particularly distressed by reported vandalism at Serb cemeteries in Kosovo, which was especially upsetting to elderly internally displaced persons who had undertaken return visits. They sometimes feel unwelcome during such visits, and their perception is that they cannot access some areas.

96. The Special Rapporteur recommends that every effort be made to guard and restore the dignity of the cemeteries of all, and that particular care be taken to protect the cemeteries of displaced populations who are not in a position to maintain ongoing upkeep. Return visits are vital for the cultural rights of internally displaced persons, and funding is needed to ensure that this can continue.

[28] See A/71/317, para. 14; A/HRC/17/38, paras. 78-79, and A/HRC/34/56/Add.1, para. 6.

VI. Conclusions and recommendations

A. Conclusions

97. Implementation of both international and domestic standards guaranteeing cultural rights, without discrimination, must be accelerated in Serbia and Kosovo, the emphasis being on realization in practice rather than window dressing for international consumption. The present recommendations should be viewed as a whole, rather than taking any particular recommendation out of the context of the entire package.

98. There is an urgent need to avoid repetition of earlier patterns and acts of cultural heritage destruction. The damage to human beings done by such crimes is sometimes even harder to repair than the damage to sites. Such acts are grave obstacles to reconciliation and gross violations of cultural rights. Prevention is critical, and when that fails, accountability and reparation are essential.

99. Cultural rights must be ensured for all in Serbia and Kosovo, without discrimination and without making these rights a political football. The denial of cultural rights is not a legitimate response to past abuses by others, nor is it a legitimate means of negotiating. It can only make the dreams of lasting peace and prosperity harder to realize. Cultural rights and cultural democracies must be achieved, without delay and without discrimination, for all who live in Serbia and Kosovo. The lessons of the past must be learned so as to achieve the promise of the future.

B. Recommendations

1. Recommendations to the Government of Serbia, the Kosovo authorities, and other stakeholders

100. **These actors should:**

(a) **Recognize cultural rights, cultural heritage and culture as core, non-optional sectors and ensure that they receive the greatest possible funding;**

(b) **Cooperate at all levels of authority, including at the level of municipalities, to implement national and international standards and recommendations on cultural rights and cultural heritage protection;**

(c) **Combat discrimination, including against women, minorities, Roma and lesbian, gay, bisexual and transgender people, in the field of cultural rights; improve the enjoyment of cultural rights by persons with disabilities, including through support of accessible arts and improved access to heritage sites;**

(d) **Respect and ensure the rights of cultural rights defenders, including through awareness-raising campaigns explaining the legitimacy of defending cultural rights, and fully implement the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders). End impunity for attacks and incitement, by both private and public actors, against cultural rights defenders by investigating all allegations of such conduct and bringing perpetrators to justice;**

(e) **Combat diverse forms of fundamentalism and extremism, including ultranationalism, and take effective action in accordance with international standards to protect the cultural rights of all from the harmful effects of such ideologies;**

(f) **Promote the voices of tolerance, present across Serbia and Kosovo, and guard against voices of intolerance.; Insist on the right of all to express freely their complex identities, to manifest their own cultural practices and to have access to and enjoy their own cultural heritage and that of others, in accordance with international standards;**

(g) **Establish and support many open and free spaces for mutual interaction and dialogue, especially in the academic, artistic and cultural spheres;**

(h) **Strengthen and continue programmes, including in public education and for teachers, that foster intercultural dialogue and greater respect for diversity and emphasize tolerance and understanding of the culture and history of different minority groups;**[29]

(i) **Fully resource the important systems of ombudspersons and enhance their capacity to respond to allegations of cultural rights violations;**

(j) **Facilitate access to cultural and religious heritage sites so as to ensure both security of sites and enjoyment of cultural rights;**

(k) **Refrain from politicizing cultural heritage and cultural rights-related issues, including for nationalistic agendas and in curricula;**

(l) **Thoroughly investigate all acts of cultural heritage destruction and damage and bring alleged perpetrators to justice in accordance with international standards;**

(m) **Take all necessary steps to reactivate the Implementation and Monitoring Council, as planned under Annex V of the Ahtisaari Plan, including through demonstrations of good will, such as permitting reconstruction and repair efforts in accordance with human rights and technical standards;**

(n) **Make efforts to produce joint documentation of all past cultural heritage destructions, for example through an independent truth commission with members representing the diverse populations and possessing relevant expertise. Such a body could make recommendations about reconstruction, accountability, memorialization and reparation, as well as gather and complete existing documentation and assemble shared narratives of the overall losses, with a view to redressing violations of cultural rights;**

(o) **Continue and accelerate efforts to reform history teaching to ensure that it fosters critical thought and debate.**[30] **Ensure cultural rights-based teaching and awareness-raising about the cultural heritage of all, acknowledging the significance specific sites may have for particular groups, as well as for all in Serbia and Kosovo, and for humanity.**

2. Recommendations to the Government of Serbia

101. **The Government of Serbia should:**

(a) **Ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Rights of All Migrant Workers and Members of Their Families;**

(b) **Develop without delay the promised cultural strategy which incorporates cultural rights and the diversities of culture in Serbia. Hold wide-ranging consultations about the policy with all relevant stakeholders, including civil society, cultural rights defenders, experts and independent artists;**

(c) **In consultation with the concerned minorities, enlarge access to bilingual education so as to enable minority children to participate in the wider society while still fully enjoying their linguistic rights. Balance implementation of the Law on National Councils of National Minorities with the imperative of combating any resulting segregation, both of which are important for the enjoyment of cultural rights;**

[29] See the concluding observations of the Committee on the Elimination of Racial Discrimination on Serbia (CERD/C/SRB/CO/1), para. 21.

[30] For more detailed recommendations, see A/68/296.

(d) **Fully implement all relevant recommendations made to Serbia by United Nations human rights treaty bodies, including the Human Rights Committee's recommendation that Serbia should "strengthen its efforts to eradicate stereotypes and widespread abuse against Roma by ... conducting more awareness-raising campaigns";**[31]

(e) **Fully implement the law on culture and all relevant constitutional provisions guaranteeing human rights, including article 44 regarding the equality of treatment of religious groups and the separation of religion and State;**

(f) **In close consultation with affected groups and experts, ensure adequate and specific memorialization of the atrocities of the 1990s and of the Holocaust. Such memorialization must respect cultural rights and promote understanding.; In particular, protect, preserve and appropriately memorialize Staro Sajmište, the German pavilion and the Topovske šupe camp.**

3. Recommendations to the Kosovo authorities

102. **The Kosovo authorities should:**

(a) **Clearly commit to implement the rights and obligations contained in the International Covenant on Economic, Social and Cultural Rights, with the understanding that it is an international instrument which remains part of the applicable law in Kosovo, pursuant to UNMIK regulation No. 1999/24;**[32]

(b) **Protect public space and cultural sites which are critical to the enjoyment of cultural rights. Ensure meaningful consultation about all decisions regarding urbanization that have an impact on cultural heritage and cultural rights;**

(c) **Diligently investigate allegations of vandalism of religious sites and cemeteries and develop effective strategies to protect all heritage sites, in particular Serbian Orthodox sites, from damage or deterioration, in consultation with the concerned groups and institutions; publicly condemn any threats to or vandalism of cultural heritage, including Serbian Orthodox sites;**

(d) **Fully and impartially implement the letter of the President of Kosovo sent in October 2016 in which he called for alleged perpetrators in past cases of cultural heritage destruction to be prosecuted, and do so in accordance with international standards;**

(e) **While guaranteeing security of cultural heritage sites of special significance to the Serbian Orthodox Church and Serbs, facilitate and ensure full access to these sites, including by Serbs, in accordance with international standards;**

(f) **Develop programmes to improve and facilitate good relationships between people in Kosovo and people travelling from Serbia to access and enjoy cultural heritage sites, including cemeteries;**

(g) **Ensure adequate educational opportunities in the Serbian language.**

4. Recommendations to the international community

103. **The Special Rapporteur recommends that the international community and international organizations:**

(a) **Support and collaborate with independent actors in civil society in Serbia and Kosovo who are engaging with cultural rights issues, including artists, cultural professionals and human rights defenders;**

---

[31] See CCPR/C/SRB/CO/2, para. 22.

[32] See A/HRC/31/54/Add.2, para. 68, and E/C.12/UNK/CO/1, para. 9.

(b) **Provide greater funding, and capacity-building where relevant, to the culture sector and for cultural heritage protection;**

(c) **Undertake reviews of best practice and any failures on the part of international actors in the protection of cultural heritage in Kosovo so as to improve practice in this area;**

(d) **Adopt a human rights approach to cultural heritage issues when supporting projects.**